THE HON'BLE Ms. JUSTICE G. ROHINI

W.P.NO.19371 OF 2006

Dated: 9th NOVEMBER, 2006.

Between :

M/s. Lajapathi Rai Memorial Club, Tenali
Rep. by its Secretary S. Nageswara Rao. .. Petitioner

And

1. The Commissioner of Prohibition & Excise,
   Andhra Pradesh, Hyderabad, and
   2 others. .. Respondents

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ORDER :

This writ petition is filed seeking a declaration that the order of the 1st respondent dated 15-9-2006 rejecting the grant of Form C-1 Licence (Club) in favour of the petitioner as arbitrary and illegal.

The petitioner which claims to be a club formed in the year 1935 made an application to the 3rd respondent for grant of club licence under the provisions of the Andhra Pradesh Excise (Grant of Licence of Selling by In-House and Conditions of Licence) Rules, 2005 (for short, 'the Rules'). Pursuant thereto, the 3rd respondent inspected the premises of the petitioner club at Door No.1-2-21, Nazarpet, Tenali and forwarded the application to the 2nd respondent along with his report. In turn, the same was forwarded to the 1st respondent – Commissioner of Prohibition & Excise, who is the licensing authority. Having considered the matter, the 1st respondent issued a No Objection Certificate (NOC) dated 9-8-2006. The Local Health Authority and Licensing Authority also issued a licence for manufacture and sale of prepared food in the petitioner club. However, the 1st respondent, under the impugned order dated 15-9-2006 rejected the proposal of the petitioner on the ground that the premises of the club is attracting disqualification under the provisions of the Rule 7 (1) (iii) of the Rules. Aggrieved by the same, this writ petition is filed.

In the affidavit filed in support of the writ petition, it is pleaded that the petitioner club was granted a similar licence in Form IL-20 during the year 2001 as per the Statutory Rules existing at the relevant point of time and the same was renewed from time to time upto Excise year 2004-05. Even in the year 2005-06, the licence fee was paid by the petitioner, however due to certain internal problems in the management of the club the licence was not obtained. It is further pleaded that since the club has been in existence in the very same premises for the past several years and club licence was granted during the earlier years without any objection, and particularly since the Prohibition & Excise Superintendent having visited the area found the same suitable and forwarded the request to the 2nd respondent, the impugned order is arbitrary and illegal.

It is to be noted that in exercise of powers conferred by Section 72 of the A.P. Excise Act, 1968, the Andhra Pradesh Excise (Grant of Licence of Selling by In-House and Conditions of Licence) Andhra Pradesh Excise (Grant of License of Selling by Bar and Conditions of Licence) Rules, 2005 are made under G.O.Ms.No.999, Revenue (Ex.II) Department, dated 24-5-2005. The said Rules shall apply for grant of licence for sale of Indian Liquor and Foreign Liquor of Selling by In-House as defined under sub-section 18(A) of Section 2 of the A.P. Excise Act, 1968. However, under Rule 7 (1) (iii) of the Rules, an In-House Club Licence in Form C-1 shall not be granted within 500 mts of predominantly residential area though the same is permissible if the proposed premises is located on a main road used for shopping purposes.

In the case on hand, the 1st respondent while passing the impugned order relied upon the reports of the 3rd respondent dated 29-8-2006 and the Prohibition & Excise Superintendent, Guntur, dated 30-8-2006.

The learned Government Pleader has placed before this Court

the relevant record which included the above said reports. A perusal of the report dated 29-8-2006 shows that the 3rd respondent while assigning detailed reasons concluded that the premises of the petitioner club attracts Rule 7 (1) (iii) of the Rules. It was categorically stated that the club is located in the residential area and the entrance to the club premises is from the vacant site of N.V.R. Kalyana Mandapam which has entrance on the western side opposite to the compound wall of the Court complex. Thus, the contention of the petitioner that the Prohibition under Rule 7 (1) (iii) of the Rules is not attracted does not appear to be correct.

In the light of the said report submitted by the 3rd respondent after spot inspection of the premises in question, I do not find any substance in the contention of the petitioner that the order of rejection was for extraneous reasons and the allegations made therein are without any basis.

Though the learned Counsel for the petitioner contended that since the petitioner club was granted similar licence for the years 2001 to 2004, it is relevant to note that under the A.P. Indian Liquor and Foreign Liquor Rules, 1970 which were in force at the relevant point of time, Rule 29 (1) (iii) proviso exempted applicability of restriction relating to the residential area to the Clubs and Star hotels and Star Hotels which were certified by the Tourism Department of the State or Central Government. Such exemption has not been provided under the new set of Rules issued under G.O.Ms.No.999, Revenue (Ex.II) Department, dated 24-5-2005.

In the circumstances, the contention of the petitioner is untenable and cannot be accepted.

The Writ Petition which is devoid of any merit is accordingly dismissed. No costs.

G. ROHINI, J.

Dt. 9-11-2006
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